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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0521-AIR-E TCEQ ID: RN100224849 CASE NO.: 33112
RESPONDENT NAME: Southwestern Public Service Company

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Harrington Station Power Plant, 8400 North Lakeside Drive, Amarillo, Potter County</p> <p>TYPE OF OPERATION: Electric power generation plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 6, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. John Hudspeth, Senior Environmental Analyst, Southwestern Public Service Company, P.O. Box 1261, Amarillo, Texas 79105 Mr. Ronald H. Dutton, Manager, Air & Water Compliance, Southwestern Public Service Company, P.O. Box 1261, Amarillo, Texas 79105 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 12-14, 2007</p> <p>Date of NOE Relating to this Case: February 27, 2007 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>AIR</p> <p>Failure to submit annual compliance certification for the period March 1 through August 28, 2005 [30 TEX. ADMIN. CODE § 122.146(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$600</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on February 14, 2007, Southwestern submitted a compliance certification for the period March 1 through August 28, 2005 as a corrective measure at the Plant.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

DATES	Assigned	5-Mar-2007
	PCW	9-Apr-2007
	Screening	2-Apr-2007
	EPA Due	24-Nov-2007

RESPONDENT/FACILITY INFORMATION	
Respondent	Southwestern Public Service Company
Reg. Ent. Ref. No.	RN100224849
Facility/Site Region	1-Amarillo
Major/Minor Source	Major

CASE INFORMATION	
Enf./Case ID No.	33112
Docket No.	2007-0521-AIR-E
Media Program(s)	Air
Multi-Media	
Admin. Penalty \$ Limit Minimum	\$0
Maximum	\$10,000
No. of Violations	1
Order Type	1660
Enf. Coordinator	Miriam Hall
EC's Team	EnforcementTeam 5

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0% Enhancement** **Subtotals 2, 3, & 7** **\$0**

Notes No change due to average performer classification.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **25% Reduction** **Subtotal 5** **\$250**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent came into compliance on February 14, 2006. The NOE was issued February 27, 2007.

Total EB Amounts **\$14** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$200** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$750**

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment **\$0**

Notes

Final Penalty Amount **\$750**

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$750**

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20% Reduction **Adjustment** **-\$150**

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$600**

Screening Date 2-Apr-2007

Docket No. 2007-0521-AIR-E

PCW

Respondent Southwestern Public Service Company

Policy Revision 2 (September 2002)

Case ID No. 33112

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN100224849

Media [Statute] Air

Enf. Coordinator Miriam Hall

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 2-Apr-2007

Docket No. 2007-0521-AIR-E

PCW

Respondent Southwestern Public Service Company

Policy Revision 2 (September 2002)

Case ID No. 33112

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN100224849

Media [Statute] Air

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 122.146(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to submit annual compliance certification for the period March 1 through August 28, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 10%

Matrix Notes

The Respondent complied with 50% of the rule. The rule requires certification for at least each 12-month period. The Respondent certified for the period six months prior to March 1, 2005 and for the six months after August 28, 2005.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

505 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent: Southwestern Public Service Company
Case ID No: 33112
Reg. Ent. Reference No: RN100224849
Media: Air
Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	27-Sep-2005	14-Feb-2007	1.4	\$14	n/a	\$14

Notes for DELAYED costs

The estimated cost of preparing and mailing the certification from the date due to compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$14

Compliance History

Customer/Respondent/Owner-Operator:	CN601481336	Southwestern Public Service Company	Classification: AVERAGE	Rating: 1.91
Regulated Entity:	RN100224849	HARRINGTON STATION POWER PLANT	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	PG0041R	
	AIR OPERATING PERMITS	PERMIT	15	
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000750745	
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	33242	
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	8752	
	AIR NEW SOURCE PERMITS	PERMIT	45591	
	AIR NEW SOURCE PERMITS	PERMIT	52255	
	AIR NEW SOURCE PERMITS	PERMIT	PSDTX631	
	AIR NEW SOURCE PERMITS	REGISTRATION	45591	
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	PG0041R	
	AIR NEW SOURCE PERMITS	AFS NUM	4837500022	
	AIR NEW SOURCE PERMITS	PERMIT	1388	
	AIR NEW SOURCE PERMITS	PERMIT	3080	
	AIR NEW SOURCE PERMITS	PERMIT	5129	
	AIR NEW SOURCE PERMITS	PERMIT	16383	
	AIR NEW SOURCE PERMITS	PERMIT	45703	
	AIR NEW SOURCE PERMITS	PERMIT	45591	
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX631	
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX017M1	
	AIR NEW SOURCE PERMITS	REGISTRATION	81171	
Location:	8400 N LAKESIDE DR, AMARILLO, TX, 79108		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 01 - AMARILLO			
Date Compliance History Prepared:	April 02, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 02, 2002 to April 02, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Miriam Hall Phone: (512) 239-1044

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 07/25/2002 | (5938) |
| 2 | 08/19/2002 | (8136) |
| 3 | 01/17/2003 | (22245) |
| 4 | 08/23/2003 | (144135) |
| 5 | 06/15/2004 | (273763) |
| 6 | 08/03/2004 | (284527) |

7	08/17/2004	(290038)
8	04/06/2005	(376599)
9	04/06/2005	(376705)
10	04/06/2005	(376772)
11	04/11/2005	(376954)
12	06/29/2005	(395585)
13	11/07/2005	(436044)
14	11/22/2005	(436020)
15	12/21/2005	(450199)
16	03/09/2006	(458051)
17	03/21/2006	(459280)
18	04/04/2006	(461317)
19	04/19/2006	(462462)
20	06/09/2006	(481131)
21	06/09/2006	(480704)
22	06/16/2006	(465783)
23	09/07/2006	(509396)
24	10/06/2006	(513597)
25	10/10/2006	(514571)
26	02/27/2007	(540147)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOUTHWESTERN PUBLIC SERVICE
COMPANY
RN100224849**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0521-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Southwestern Public Service Company ("Southwestern") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Southwestern appear before the Commission and together stipulate that:

1. Southwestern owns and operates a electric power generation plant at 8400 North Lakeside Drive in Amarillo, Potter County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Southwestern agree that the Commission has jurisdiction to enter this Agreed Order, and that Southwestern is subject to the Commission's jurisdiction.
4. Southwestern received notice of the violations alleged in Section II ("Allegations") on or about March 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Southwestern of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Southwestern has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars

(\$150) is deferred contingent upon Southwestern's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Southwestern fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Southwestern to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Southwestern have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on February 14, 2007, Southwestern submitted a compliance certification for the period March 1 through August 28, 2005 as a corrective measure at the Plant.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Southwestern has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Southwestern is alleged to have failed to submit annual compliance certification for the period March 1 through August 28, 2005, in violation of 30 TEX. ADMIN. CODE § 122.146(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on February 12 through 14, 2007.

III. DENIALS

Southwestern generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS


1. It is, therefore, ordered by the TCEQ that Southwestern pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Southwestern's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Southwestern Public Service Company, Docket No. 2007-0521-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Southwestern. Southwestern is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Southwestern in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Southwestern, or three days after the date on which the Commission mails notice of the Order to Southwestern, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director


8/29/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5/24/2007
Date

Ronald H. Dutton

Name (Printed or typed)
Authorized Representative of
Southwestern Public Service Company

Manager, Air & Water Compliance

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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